

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TRISTATE HVAC EQUIPMENT, LLP,

Plaintiff,

v.

BIG BELLY SOLAR, INC.,

Defendant.

CIVIL ACTION NO. 10-1054

**ORDER**

**AND NOW**, this 20th day of October, 2010, upon careful consideration of defendant Big Belly's motion to dismiss or alternatively to transfer venue (docket no. 6), plaintiff TriState's opposition thereto, and Big Belly's reply, **IT IS HEREBY ORDERED** that the motion is **GRANTED IN PART AND DENIED IN PART** as follows:

The motion to dismiss the complaint for lack of subject-matter jurisdiction under Rule 12(b)(1) is **DENIED**.

The motion to dismiss Count IV, TriState's claim under the Lanham Act, is **GRANTED**.

The motion to dismiss the complaint for failure to state a compulsory counterclaim is **DENIED**.

The motion to dismiss the complaint for improper venue under Rule 12(b)(3) is **DENIED**.

The motion to transfer venue to the District of Massachusetts is **GRANTED**, and the Clerk shall transfer this action to the District of Massachusetts.

The discovery conference scheduled for November 3, 2010, is canceled.

s/ William H. Yohn Jr., Judge

William H. Yohn Jr., Judge